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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9
10 SAM WILLIAMSON, individually and on
behalf of all others similarly situated,

11 Plaintiff,

12 v.
13 MCAFEE, INC.,

Defendant.

Case No. 5:14-cv-02475-EJD

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Honorable Edward J. Davila

14 SAMANTHA KIRBY, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.
18 MCAFEE, INC.,

Defendant.

Case No. 5:14-cv-02475-EJD

1 This matter comes before the Court upon Plaintiffs' Motion for Preliminary Approval of
 2 Class Settlement. The Parties have entered into a Class Action Settlement Agreement and
 3 Release (the "Settlement Agreement") which, if approved, would resolve the above-captioned
 4 actions (collectively, the "Litigation"). Upon review and consideration of the motion papers, the
 5 argument presented regarding the motion, and the Settlement Agreement including all exhibits
 6 thereto, the Court finds that there is sufficient basis for: (1) granting preliminary approval of the
 7 Settlement Agreement; (2) provisionally certifying the Auto-Renewal Class and Reference Price
 8 Class for settlement purposes only; (3) appointing Class Counsel and the Named Plaintiffs to
 9 represent the Auto-Renewal Class and Reference Price Class; (4) approving the Parties' proposed
 10 notice program and forms of notice, and directing that notice be disseminated to the members of
 11 the Auto-Renewal Class and Reference Price Class (together, the "Class Members") pursuant to
 12 the notice program provided in the Settlement Agreement; (5) approving the procedures set forth
 13 in the Settlement Agreement for Class Members to exclude themselves from the Auto-Renewal
 14 Class and Reference Price Class, and to object to the Settlement; (6) appointing a Settlement
 15 Administrator to conduct the duties assigned to that position in the Settlement Agreement; and (7)
 16 setting a hearing (the "Final Fairness Hearing"), at which the Court will consider: (a) whether to
 17 grant final approval of the Settlement Agreement; (b) Class Counsel's application for attorneys'
 18 fees and costs; and (c) any request for service awards for the Named Plaintiffs.

19 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

20 1. Capitalized terms not otherwise defined herein shall have the same meaning as set
 21 forth in the Settlement Agreement.

22 2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and has
 23 personal jurisdiction over the Parties. Venue is proper in this District.

24 3. The Auto-Renewal Class and Reference Price Class, defined below, are
 25 provisionally certified, for settlement purposes only, pursuant to Federal Rules of Civil Procedure
 26 23(a), 23(b)(3) and 23(e).

27 4. The Auto-Renewal Class is defined as follows: All persons in the United States
 28 who paid McAfee for the automatic renewal of a subscription license for any McAfee software

1 (including software branded under the “McAfee” or “Intel Security” name) from January 10,
 2 2010 to February 10, 2015, and whose first auto-renewal charge was at a price greater than the
 3 price paid to McAfee for the initial subscription license. The Auto-Renewal Class shall not
 4 include any person whose charges as described above were fully refunded by McAfee or fully
 5 charged back through such person’s credit or debit card issuer.

6 5. The Reference Price Class is defined as follows: All persons in the United States
 7 (1) who initially purchased from McAfee or manually renewed through McAfee a subscription
 8 license for any McAfee software (including software branded under the “McAfee” or “Intel
 9 Security” name) from January 10, 2010 to February 10, 2015, and (2) whose subscription license
 10 was initially purchased or manually renewed at a discounted price.

11 6. Excluded from the Auto-Renewal Class and Reference Price Class are: employees
 12 of McAfee and its parents and affiliates (including Intel Corporation), counsel for all Parties, the
 13 Judge presiding over the Litigation, and the staff of the Court.

14 7. The Court finds that, for settlement purposes only, the Auto-Renewal Class and
 15 Reference Price Class, as defined above, meet the requirements for class certification under
 16 Federal Rules of Civil Procedure 23(a) and 23(b)(3)—namely, that for settlement purposes, (1)
 17 the Class Members are sufficiently numerous such that joinder is impracticable; (2) there are
 18 common questions of law and fact; (3) the Named Plaintiffs’ claims are typical of those of the
 19 Class Members; (4) the Named Plaintiffs and Class Counsel have adequately represented, and
 20 will continue to adequately represent, the interests of the Class Members; and (5) common
 21 questions predominate and a class action is superior to other available methods of adjudication.

22 8. Certification of the Auto-Renewal Class and Reference Price Class shall be solely
 23 for settlement purposes and without prejudice to the Parties in the event the Settlement
 24 Agreement is not finally approved by this Court or otherwise does not take effect.

25 9. The Court preliminarily approves the proposed Settlement Agreement as fair,
 26 reasonable and adequate, entered into in good faith, free of collusion, and within the range of
 27 possible judicial approval. The Court notes that the Settlement Agreement was reached through
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1 extensive arms-length negotiations assisted by an experienced mediator, Eric Green of
 2 Resolutions, LLC.

3 10. The Court appoints Named Plaintiffs Sam Williamson and Samantha Kirby as
 4 class representatives for the Auto-Renewal Class and Reference Price Class.

5 11. The Court appoints the following as Class Counsel for the Auto-Renewal Class
 6 and Reference Price Class, pursuant to Federal Rule of Civil Procedure 23(g): Lieff Cabraser
 7 Heimann & Bernstein LLP (Michael W. Sobol and Roger N. Heller), Hattis Law (Daniel M.
 8 Hattis), and Ahdoot & Wolfson, PC (Robert Ahdoot and Tina Wolfson).

9 12. The Court appoints Angeion Group (“Angeion”) to serve as the Settlement
 10 Administrator, and directs Angeion to carry out all duties and responsibilities of the Settlement
 11 Administrator as specified in the Settlement Agreement.

12 13. The Court approves the program for disseminating notice to Class Members set
 13 forth in the Settlement Agreement (herein, the “Notice Program”). The Court approves the form
 14 and content of the proposed forms of notice, in the forms attached as Exhibits 2 through 6 to the
 15 Settlement Agreement. The Court finds that the proposed forms of notice are clear and readily
 16 understandable by Class Members. The Court finds that the Notice Program, including the
 17 proposed forms of notice, constitutes the best notice practicable under the circumstances,
 18 constitutes valid, due and sufficient notice to the Class Members in full compliance with the
 19 requirements of applicable law, including Federal Rule of Civil Procedure 23 and the Due Process
 20 Clause of the United States Constitution, and is the only notice to the Class Members of the
 21 Settlement Agreement that is required.

22 14. The Court approves the form and content of the proposed Cash Election form,
 23 substantially in the form attached as Exhibit 8 to the Settlement Agreement, and approves the
 24 procedures set forth in the Settlement Agreement for the submission of Cash Elections.

25 15. Class List: Within thirty (30) days following the entry of this Order, McAfee shall
 26 obtain from its records and provide to the Settlement Administrator a Class List that includes, for
 27 each Class Member: (a) the last known email address that McAfee possesses; (b) the last known

1 mailing address that McAfee possesses; and (c) whether he or she is a member of the Auto-
 2 Renewal Class, the Reference Price Class, or both classes.

3 16. Email Notice: Within forty-five (45) days following the entry of this Order (the
 4 “Notice Date”), the Settlement Administrator shall email the applicable Short Form Notice,
 5 substantially in the forms attached as Exhibits 2 and 4 to the Settlement Agreement, to each of the
 6 Class Members, sent to the email address listed for them in the Class List. The “sender” title and
 7 subject line for the email Short Form Notices shall be as set forth in the Settlement Agreement.

8 17. Mailed Notice: Within ten (10) days after all email Short Form Notices have been
 9 sent, for any Class Member for whom the Settlement Administrator receives notice that the email
 10 Short Form Notice sent to them was not received (i.e., a “bounce-back”), the Settlement
 11 Administrator shall update the mailing address listed for such Class Members in the Class List
 12 through the U.S. Postal Service National Change of Address Database, and mail them the
 13 applicable Short Form Notice, substantially in the forms attached as Exhibits 3 and 5 to the
 14 Settlement Agreement, via first class U.S. mail, in the form of a double-sided postcard, at their
 15 mailing addresses as updated. For any mailed Short Form Notices that are returned with
 16 forwarding address information, the Settlement Administrator shall promptly re-mail the
 17 appropriate Short Form Notice to the new address indicated.

18 18. Settlement Website: The Settlement Administrator shall establish an Internet
 19 website, at the URL www.mcafeewilliamsonsettlement.com (“Settlement Website”), where Class
 20 Members can obtain further information about the Settlement and their rights, and, as applicable,
 21 submit Cash Elections electronically. The Settlement Website shall be optimized for display on
 22 mobile devices. The Settlement Website shall be established by the Settlement Administrator and
 23 operational by no later than the first date that any Short Form Notices are sent to Class Members,
 24 and shall be maintained by the Settlement Administrator until the administration of payments to
 25 Cash Payment Electors is completed. The Settlement Website shall include, and make available
 26 for download, the Long Form Class Notice, substantially in the form attached as Exhibit 6 to the
 27 Settlement Agreement, and shall also include a printable and downloadable hard-copy Cash

1 Election form that can be submitted via mail, and downloadable copies of: the Settlement
 2 Agreement, the operative complaints in the *Williamson* Case and the *Kirby* Case, this Order, and,
 3 after it is filed, Class Counsel's application for attorneys' fees and costs and for Named Plaintiff
 4 service awards, and any other pleadings or case documents that the Parties mutually agree should
 5 be included or as directed by the Court. The Settlement Website shall include an appropriate
 6 mechanism for Class Members to update their contact information.

7 19. Toll-Free Number: The Settlement Administrator shall establish a toll-free
 8 telephone number ("Toll-Free Number") that Class Members can call if they have questions about
 9 the Settlement. The Toll-Free Number shall be established by the Settlement Administrator and
 10 operational by no later than the first date that any Short Form Notices are sent to Class Members,
 11 and shall be maintained by the Settlement Administrator until the administration of payments to
 12 Cash Payment Electors is completed. The Toll-Free Number shall be provided on the Settlement
 13 Website and in the Short-Form Notices and the Long Form Class Notice.

14 20. No later than seven (7) days before the Final Fairness Hearing, the Settlement
 15 Administrator shall file an affidavit confirming its implementation of the Notice Program.

16 21. Class Members in the Auto-Renewal Class shall have the option of submitting
 17 Cash Election forms online via the Settlement Website or by mail. Cash Election forms
 18 submitted online must be submitted by no later than seventy (70) days after the Notice Date (the
 19 "Cash Election Deadline"). Cash Election forms submitted by mail must be postmarked no later
 20 than the Cash Election Deadline.

21 22. Any Class Member who wishes to be excluded from the Auto-Renewal Class, the
 22 Reference Price Class, or both classes, must send a written request for exclusion, addressed to the
 23 Settlement Administrator at the address listed in the Long Form Class Notice, postmarked no later
 24 than forty-five (45) days after the Notice Date (the "Opt-Out Deadline"), and must include: (i) the
 25 case name (*Williamson/Kirby v. McAfee, Inc.*); (ii) their name, address, and telephone number;

1 (iii) a clear statement that they want to opt-out the Auto-Renewal Class, the Reference Price
 2 Class, or both classes;¹ and (iv) their own signature.

3 23. Class Members in the Auto-Renewal Class who do not timely and validly exclude
 4 themselves from the Auto-Renewal Class, by written notice correctly directed and containing the
 5 requisite information as set forth above, shall remain Class Members of the Auto-Renewal Class,
 6 and shall be bound by any order(s) of the Court regarding the Auto-Renewal Class and the
 7 Settlement as it relates to the Auto-Renewal Class.

8 24. Class Members in the Reference Price Class who do not timely and validly
 9 exclude themselves from the Reference Price Class, by written notice correctly directed and
 10 containing the requisite information as set forth above, shall remain Class Members of the
 11 Reference Price Class, and shall be bound by any order(s) of the Court regarding the Reference
 12 Price Class and the Settlement as it relates to the Reference Price Class.

13 25. The Settlement Administrator shall promptly provide copies of any received
 14 requests for exclusion to Class Counsel and counsel for McAfee. By no later than seven (7) days
 15 before the Final Fairness Hearing, the Settlement Administrator shall file with the Court final lists
 16 of individuals who have timely and validly opted out of the Auto-Renewal Class and the
 17 Reference Price Class.

18 26. Any Class Member may object to the Settlement (except to the extent that the
 19 Settlement relates only to a class in which the Class Member in question is not included based on
 20 the class definitions herein or from which the Class Member in question has timely and validly
 21 requested exclusion), Class Counsel's application for attorneys' fees and costs, and/or the request
 22 for Named Plaintiff service awards. To be considered, an objection must be in writing, must be
 23 filed with or mailed to the Court, and mailed to Class Counsel and McAfee's counsel, at the

25 ¹ Class Members who are in both the Auto-Renewal Class and the Reference Price Class who
 26 indicate in a timely and otherwise valid request for exclusion that they wish to opt-out of "the
 27 class," "the case," "the settlement," or who use other similar language that makes clear their
 28 intent to opt-out but does not specify whether their intent is to opt-out of one class or both classes,
 shall be treated as having opted-out of both the Auto-Renewal Class and the Reference Price
 Class.

1 addresses listed in the Long Form Class Notice, postmarked no later than forty-five (45) days
 2 after the Notice Date (the “Objection Deadline”), and must include the following: (i) the case
 3 caption; (ii) the name, address, and telephone number of the person objecting; (iii) the basis upon
 4 which the objector claims to be a Class Member; (iv) all grounds for the objection, accompanied
 5 by any legal and factual support; (v) whether the objector is represented by counsel, and if so the
 6 identity of such counsel; (vi) a statement confirming whether the objector intends to personally
 7 appear and/or testify at the Final Fairness Hearing; (vii) the identity of any counsel who will
 8 appear at the Final Fairness Hearing on the objector’s behalf; (viii) a list of any witnesses who
 9 may be called to testify at the Final Fairness Hearing, whether in person, by deposition, or
 10 affidavit; (ix) a list of any exhibits, and copies of same, which the objector may offer at the Final
 11 Fairness Hearing; and (x) the objector’s signature.

12 27. No Class Member may contest the approval of the terms and conditions of the
 13 Settlement Agreement, the Final Judgment and Order, any request for or award of attorneys’ fees
 14 and costs to Class Counsel, or any request for or award of Named Plaintiff service awards, except
 15 by filing and serving a written objection in accordance with the provisions set forth above. Any
 16 Class Member who fails to object in the manner prescribed above, shall be deemed to have
 17 waived, and shall be foreclosed forever from raising, objections to the Settlement Agreement,
 18 Class Counsel’s application for attorneys’ fees and costs, and any application for Named Plaintiff
 19 service awards.

20 28. The Court directs that the Final Fairness Hearing be scheduled for _____,
 21 2016, at :___.m., to assist the Court in determining whether the Settlement Agreement should
 22 be finally approved as fair, reasonable and adequate to the Class Members; whether the Final
 23 Order and Judgment should be entered; whether Class Counsel’s application for attorneys’ fees
 24 and costs should be approved; and whether any request for service awards for the Named
 25 Plaintiffs should be approved.

26 29. By no later than fifteen (15) days after the Notice Date, Class Counsel shall file
 27 with the Court a motion for Final Judgment and Order. By no later than fifteen (15) days after the
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1 Notice Date, Class Counsel shall file their application for attorneys' fees and costs and for any
2 service awards for the Named Plaintiffs. McAfee shall have thirty (30) days to respond to the
3 application if it chooses to do so. After they are filed, Class Counsel's application for attorneys'
4 fees, costs, and Named Plaintiff service awards and any response by McAfee shall be posted on
5 the Settlement Website.

6 30. By no later than fourteen (14) days prior to the Final Fairness Hearing, the Parties
7 shall file any responses to any objections, and any replies in support of the motion for Final
8 Judgment and Order and/or Class Counsel's application for attorneys' fees, costs, and Named
9 Plaintiff service awards.

10 31. The Court reserves the right to modify the date of the Final Fairness Hearing and
11 related deadlines set forth herein. In the event the Final Fairness Hearing is moved, the new date
12 and time shall be posted on the Settlement Website.

13 32. This Order shall become null and void and shall be without prejudice to the rights
14 of the Parties, all of whom shall be restored to their respective positions existing immediately
15 before the Court entered this Order, if: (a) the Settlement Agreement is not finally approved by
16 the Court; (b) the Settlement is terminated in accordance with the terms of the Settlement
17 Agreement; or (c) the Settlement does not become effective pursuant to the terms of the
18 Settlement Agreement for any other reason. In such event, the Settlement Agreement shall
19 become null and void and be of no further force and effect, and neither the Settlement Agreement
20 nor the Court's orders relating to the Settlement Agreement, including this Order, shall be used
21 for any purpose.

22 33. If the Settlement does not become final and effective pursuant to the terms of the
23 Settlement Agreement, this Order shall have no force or effect, and shall not be construed or used
24 as an admission, concession, or declaration by or against McAfee of any fault, wrongdoing,
25 breach, or liability, or be construed or used as an admission, concession, or declaration by or
26 against any of the Named Plaintiffs or Class Members that their claims lack merit or that the relief

1 requested is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses
 2 or claims he, she, or it may have in this Litigation or in any other lawsuit.

3 34. Pending the final determination of whether the Settlement Agreement should be
 4 approved, all proceedings in this Litigation, except as may be necessary to implement the
 5 Settlement Agreement or comply with the terms of the Settlement Agreement, are hereby stayed.

6 35. Without further order of the Court, the Parties may agree to make non-material
 7 modifications in implementing the Settlement Agreement that are not inconsistent with this
 8 Order.

9 36. The following chart summarizes the dates and deadlines set by this Order:

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|---|--|
| Last day for McAfee to provide the Class List to the Settlement Administrator | [30 days after entry of Preliminary Approval Order] |
| Notice Date | [45 days after entry of Preliminary Approval Order] |
| Last day for: (a) Class Counsel to file motion for entry of Final Judgment and Order; and (b) Class Counsel to file their application for attorneys' fees, costs, and Named Plaintiff service awards, with a response, if any, by McAfee due within thirty (30) days thereafter | [15 days after Notice Date] |
| Opt-Out Deadline | [45 days after Notice Date] |
| Objection Deadline | [45 days after Notice Date] |
| Cash Election Deadline | [70 days after Notice Date] |
| Last day for the Parties to file any responses to objections, and any reply papers in support of motion for entry of Final Judgment and Order and/or Class Counsel's application for attorneys' fees, costs, and Named Plaintiff service awards | [14 days before Final Fairness Hearing] |
| Final Fairness Hearing | _____, 2016 at ___ .m. |

27 IT IS SO ORDERED.
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1 Dated: _____, 2016

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3 EDWARD J. DAVILA
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5 United States District Judge
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